



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, VA 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

August 22, 2018

(804) 698-4000
1-800-592-5482

Mr. William T. Walker
Chief, Regulatory Branch
U.S. Army Corps of Engineers
803 Front Street
Norfolk, Virginia 23510-1096

RE: Final Section 401 Certification of Regional Permits 18-RP-01, 18-RP-02, 18-RP-11, 18-RP-15, 18-RP-16, 18-RP-17, 18-RP-18, 18-RP-19, 18-RP-22 and Regional Permit General Conditions

Dear Mr. Walker:

Provided herein is the Commonwealth of Virginia's decision with regard to Section 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (the Corps) 2018 Regional Permits RP-02, RP-15, RP-17, RP-18, RP-19, and RP-22 and applicable Regional Permit Conditions, as public noticed by the Corps on February 26, 2018, and for activities authorized by the U.S. Army Corps of Engineers (the Corps) 2018 Regional Permits RP-01 and RP-11 and applicable Regional Permit Conditions, as public noticed by the Corps on May 17, 2018.

Pursuant to 40 CFR 121.2 (a)(2) and (3), the Virginia Department of Environmental Quality (DEQ) on behalf of the State Water Control Board (the Board) has examined (i) the RPs and the Norfolk District Regional Permit Conditions and (ii) other decision documents provided by the Corps to base its certification. Accordingly, the Board finds that there is a reasonable assurance that the activities permitted under the Corps' regional permits, including the Norfolk District Regional Permit Conditions, will be conducted in a manner which will not violate applicable water quality standards, provided permittees comply with all applicable Section 401 conditions (see table attached herein).

Further, pursuant to Virginia Water Protection (VWP) Permit Regulation 9VAC25-210-130 H, the Board is issuing this final §401 Water Quality Certification as meeting the requirements of the VWP regulation after having advertised and accepted public comment for 30 days on our intent to provide this certification. The public comment period began on July 16, 2018 and ended on August 15, 2018. No comments were received.

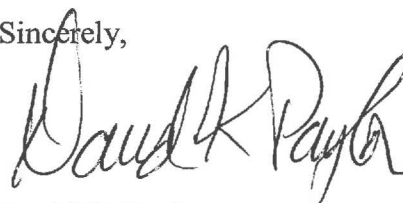
Mr. William T. Walker
August 22, 2018

Please be aware that the final review for consistency with Virginia's Coastal Resources Management Program (VCP) pursuant to the federal Coastal Zone Management Act of 1972, as amended, is not yet complete. Projects in the Tidewater area of Virginia may require additional coordination with the VCP prior to issuance of these regional permits until the federal consistency review is complete. A map depicting those localities within the coastal zone can be found at <http://www.deq.virginia.gov/coastal/coastmap.html>. Questions regarding federal consistency with VCP should be directed to Bettina Sullivan at (804) 698-4204 or bettina.sullivan@deq.virginia.gov.

The Commonwealth reserves its right to require an individual application for a permit or a certificate or otherwise take action on any specific project that could otherwise be covered under any of the Corps' regional, general, or programmatic general permits when it determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate.

Please do not hesitate to contact Dave Davis (804) 698-4105 or dave.davis@deq.virginia.gov if you have any questions regarding this Section 401 Water Quality Certification.

Sincerely,



David K. Paylor

Attachment: Commonwealth of Virginia Section 401 Water Quality Certification Actions Table – Norfolk District 2018 Regional Permits

cc: Ms. Bettina Sullivan, DEQ Office of Environmental Impact Review
Ms. Kim Prisco-Baggett, Norfolk District Army Corps of Engineers
Ms. Scharlene Floyd, Norfolk District Army Corps of Engineers
Mr. William Seib, Baltimore District Regulatory Branch
Mr. Tony Watkinson; Chief, Habitat Division, Virginia Marine Resources Commission
Regional VWP Managers

**Commonwealth of Virginia Section 401 Water Quality Certification Actions Table –
Norfolk District 2018 Regional Permits**

Final §401 Certification (* indicates a change from existing certification)	Conditions
18-RP-01 Denied Certain Virginia Department of Transportation (VDOT) roadway and railway projects in waters of the United States, within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Army Corps of Engineers (Corps)	
18-RP-02 Unconditional 1 (Maintenance Dredging for Previously Authorized Projects)	
18-RP-02 *Conditional 2 (New Dredging in Navigable Waters) 3 (Navigationally-Related Dredging/Excavation of Non-tidal Waters Not Subject to the Exemption Under Section 404(f)(1)(c))	(1) Dredging shall not be used to create a deep space for water withdrawal. (2) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.
18-RP-11 (new) Conditional Certain Virginia Department of Transportation (VDOT) roadway and railway projects that qualify for the conditions and thresholds of a Nationwide Permit (NWP) but require a Pre-Construction Notification (PCN) in accordance with General Condition 18(c)	VDOT shall copy DEQ-Office of Wetland and Stream Protection, Central Office, on all documentation meeting the requirements of Part IV <u>Notification Requirements</u> of the 18-RP-11.
18-RP-15 *Conditional Maintenance of existing drainage ditches	Deviations from the original configuration or filled area shall not change the character, scope, or size of the original design or approved alternative design.

Final §401 Certification (* indicates a change from existing certification)	Conditions
<p>18-RP-17 and RP17 Certificate of Compliance Form</p> <p>*Conditional</p> <p>Installation and/or construction of open-pile piers, mooring structures/devices, certain covered boathouses/boatslips, boatlifts, osprey poles/platforms, accessory pier structures, and devices associated with shellfish gardening, for private use.</p>	<p>(1) The discharge shall not include structures such as pilings to construct a platform to mount a pump for water withdrawals unless otherwise excluded from surface water withdrawal permitting per 9VAC-25-210-310.</p> <p>(2) The impact(s) shall not exceed 2 acres of wetlands or 1, 500 linear feet of stream bed.</p> <p>(3) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62. 1-44. 15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</p> <p>(4) For water-based energy projects using similar structures, the discharge shall not include water withdrawals, such as the construction of an intake structure, weir, water diversion structure, or other structure transporting non-potable raw surface water.</p>
<p>18-RP-18</p> <p>*Conditional</p> <p>Installation and/or construction of open-pile piers, mooring structures/devices, fender piles, covered boathouses/boatslips, boatlifts, osprey pilings/platforms, accessory pier structures, and devices associated with shellfish gardening, for private, commercial, community, and government use.</p>	<p>(1) The discharge shall not include structures such as pilings to construct a platform to mount a pump for water withdrawals unless otherwise excluded from surface water withdrawal permitting per 9VAC-25-210-310.</p> <p>(2) The impact(s) shall not exceed 2 acres of wetlands or 1, 500 linear feet of stream bed.</p> <p>(3) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62. 1-44. 15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</p> <p>(4) For water-based energy projects using similar structures, the discharge shall not include water withdrawals, such as the construction of an intake structure, weir, water diversion structure, or other structure transporting non-potable raw surface water.</p>

Final §401 Certification (* indicates a change from existing certification)	Conditions
<p>18-RP-19 Unconditional 1 (Living Shoreline Group 1: Non-structural activities that provide substrate necessary to support wetland vegetation and/or beach nourishment) and 2 (Living Shoreline Group 2: Sill structures with tidal marsh and/or beach nourishment)</p>	
<p>18-RP-19 Unconditional for activities conducted in tidal waters that are authorized by any applicable, required permits issued by the Virginia Marine Resources Commission</p> <p>*Conditional for the following activities conducted in non-tidal surface waters of Virginia: 3 (Low breakwaters and associated sandy fill material) 4 (Bulkheads, riprap, and associated backfill and/or excavation, including bulkhead repair and/or replacement) 5 (Groins, jetties, spurs and/or baffles and associated sandy fill material)</p>	<p>(1) Stabilization activities shall not be placed for the purpose of a stream diversion. (2) Stabilization activities shall not permanently impact more than 1,500 linear feet of any type of non-tidal stream bed. (3) For maintenance of bulkhead structures, the discharge shall not increase the capacity of an impoundment or reduce the quantity of instream flows downstream. (4) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62. 1-44. 15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</p>
<p>18-RP-19 *Conditional 6 (Aquaculture or mariculture activities)</p>	<p>(1) The activity shall comply with the conditions of any Virginia Pollutant Discharge Elimination System (VPDES) permit issued for the facility. (2) The associated activities shall not include a surface water withdrawal or diversion unless otherwise excluded from surface water withdrawal permitting per 9VAC-25-210-310. (3) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62. 1-44. 15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</p>

Final §401 Certification (* indicates a change from existing certification)	Conditions
<p>18-RP-19</p> <p>Unconditional for activities conducted in tidal waters that are authorized by any applicable, required permits issued by the Virginia Marine Resources Commission</p> <p>*Conditional for the following activities conducted in non-tidal surface waters of Virginia:</p> <p>7 (Boat ramps and accessory structures, including any fill or excavation for installation)</p>	<p>Construction of boat ramps in non-tidal waters that <i>do not</i> meet the following criteria require application to DEQ for consideration of a VWP permit: (a) The discharge into surface waters is 50 cubic yards or less of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless waived in writing by the Corps district engineer because the discharge will result in no more than minimal adverse environmental effects; (b) The boat ramp is 20 feet or less in width, unless waived in writing by the Corps district engineer because the discharge will result in no more than minimal adverse environmental effects; (c) The base material is crushed stone, gravel or other suitable material; (d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no surface waters; and, (e) No material is placed in special aquatic sites, including wetlands.</p>

Final §401 Certification (* indicates a change from existing certification)	Conditions
<p>18-RP-22</p> <p>*Conditional</p> <p>1 (Construction of piers, boat docks, jetties, breakwaters structures, dolphins, boat ramps and boathouses using materials commonly acceptable for their construction such as unsinkable flotation materials, pressure treated lumber, pilings, and concrete)</p> <p>2 (Construction and backfilling of bulkheads and placement of riprap or appropriate bioengineering technique along eroding shorelines for shoreline stabilization and erosion control)</p>	<p>(1) Stabilization activities shall not be placed for the purpose of a stream diversion or impounding flow in an intermittent or perennial water body.</p> <p>(2) Activities shall not permanently impact more than 1,500 linear feet of any type of non-tidal stream bed or more than 1/10 of an acre non-tidal wetlands.</p> <p>(3) Construction of boat ramps that <i>do not</i> meet the following criteria require application to DEQ for consideration of a VWP permit: (a) The discharge into surface waters is 50 cubic yards or less of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless waived in writing by the Corps district engineer because the discharge will result in no more than minimal adverse environmental effects; (b) The boat ramp is 20 feet or less in width, unless waived in writing by the Corps district engineer because the discharge will result in no more than minimal adverse environmental effects; (c) The base material is crushed stone, gravel or other suitable material; (d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no surface waters; and, (e) No material is placed in special aquatic sites, including wetlands.</p> <p>(4) Deviations from the original configuration or filled area shall not change the character, scope, or size of the original design or approved alternative design.</p> <p>(5) The discharge shall not include water withdrawals, such as the construction of an intake structure, weir, water diversion structure, or other structure transporting non-potable raw surface water.</p> <p>(6) The discharge shall not include structures such as pilings to construct a platform to mount a pump for water withdrawals unless otherwise excluded from surface water withdrawal permitting per 9VAC-25-210-310.</p> <p>(7) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</p>

Final §401 Certification (* indicates a change from existing certification)	Conditions
<p>18-RP-22 *Conditional 3 (Excavation of boat slips and channels (channelward of the normal high pool elevation) for recreational boating, where excavated material is placed in high ground)</p>	<p>(1) The dredging shall not be used to create a deep space for water withdrawal. (2) The discharge shall not increase the capacity of an impoundment or reduce the quantity of instream flows downstream. (3) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</p>
<p>18-RP-22 *Conditional 4 (Installation of submerged and aerial power lines and utility lines where U. S. Coast Guard requirements for aerial lines are met and pre-project elevation contours are restored)</p>	<p>(1) The activities shall not be associated with a surface water withdrawal or the transport of non-potable raw surface water, except for the purpose of hydrostatic testing and when the associated discharges are authorized by a VPDES permit, if required. (2) Activities shall not permanently impact more than 1,500 linear feet of any type of non-tidal stream bed or more than 2 acres of non-tidal wetlands. (3) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C. (4) Temporary diversions of surface water associated with "pump-arounds" during the construction of utility crossings are specifically allowed.</p>
<p>18-RP-22 *Conditional 5 (Maintenance of existing water intake and outfall structures provided all State and Federal required authorization have been obtained)</p>	<p>(1) Deviations from the original configuration or filled area shall not change the character, scope, or size of the original design or approved alternative design. (2) The structure or maintenance shall not be associated with intake structures unless otherwise excluded from surface water withdrawal permitting per 9VAC-25-210-310. (3) The discharge shall not increase the capacity of an impoundment or reduce the quantity of instream flows downstream. (4) The Corps of Engineers shall provide DEQ an annual report of projects authorized by this Regional Permit that includes detailed information on physical changes to water withdrawal structures, such as the maintenance of an intake, dam, weir, or water diversion structure that are deviations from the original configuration, or are a change in the character, scope, or size of the original design, or where those deviations would otherwise reduce instream flows. (5) Any compensatory mitigation shall meet the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</p>